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EXAMINER

JANCA, ANDREW JOSEPH

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/566,974	Applicant(s) MCGILL, SHANE ROBERT	
	Examiner Andrew Janca	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-73 is/are pending in the application.
- 4a) Of the above claim(s) 72 and 73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 25-73 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/2/2006, 4/19/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Summary

1. This is the initial Office action based on the 10/566,974 application filed August 9, 2004.
2. Line numbers in US patents will be referred to by "xx:yy", where "xx" is the column number and "yy" are the line numbers. Paragraphs in published US applications will be referred to by "Pzz", where "zz" is the paragraph number.
3. By preliminary amendment applicant cancelled claims 1-24 and replaced them with new claims 25-73. Claims 25-73 are subject to a restriction requirement.

Response to Restriction Requirement

4. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

5. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 25-71, drawn to a mixing chamber removable from its stirrer and support.
 - II. Claims 72-73, drawn to a method for blending food.
6. The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or

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corresponding special technical features for the following reasons: the apparatus of invention I is fully anticipated by a prior art reference, US 2002/0127307 A1 by McGILL.

7. The examiner has required restriction between product and process claims.

Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder.

All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

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8. During a telephone conversation with Alan Kagan on September 25, 2008 a provisional election was made with traverse to prosecute the invention of I, claims 25-71. Affirmation of this election must be made by applicant in replying to this Office action. Claims 72 and 73 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Priority

9. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

10. The disclosure is objected to because of the following informality: paragraph 22, “..embodiment of **a/the** mixing apparatus...” omits either the definite or indefinite article. Appropriate correction is required.

Claim Rejections – Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

12. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

13. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 25, 31, 35, 43, 59, 62, 64, and 70 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 and 8 of U.S. Patent No. 6,854,875 B2 to MCGILL. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are drawn to a container for mixing beverages with mixing means mounted upon the lid, a clamping support, and an opening through the lid to access the contents of the vessel, which vessel parts are nestable.

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15. Claims 25, 31, 35, 43, 59, 62, 64, and 70 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 7-9, 14, and 15 of U.S. Patent No. US 7,168,845 B2 to MCGILL. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are drawn to a container for mixing beverages with mixing means mounted upon the lid, a clamping support, and an opening through the lid to access the contents of the vessel, which vessel parts are nestable.

16. Claims 25, 31, 32, 49, and 59 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4, 6, and 7 of U.S. Patent No. 7,309,156 B2 to MCGILL. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are drawn to a container for mixing beverages with mixing means mounted upon the lid, which lid has a circumferential rim with specific engagement features, and which vessel parts are nestable.

17. Claims 25, 31, 35, 49, 59, and 70 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 7, and 9 of U.S. Patent No. 7,147,365 B2 to MCGILL. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are drawn to a container for mixing beverages with mixing means mounted upon the lid, which lid has a circumferential rim with specific engagement features, and a clamping support, and which vessel parts are nestable.

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18. Claims 25, 31, 32, 49, 59, and 69 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 13, 15-17, 23, 24, 26, and 27 of copending Application No. 11/600,283 by MCGILL.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they are drawn to a container for mixing beverages with mixing means mounted upon the lid, which lid has a circumferential rim with specific engagement features, and which vessel parts are nestable. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

19. Claims 25, 32, 35, 49, 59, and 70 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 13, 15-17, 23, 24, 26, and 27 of copending Application No. 11/813,484 by MCGILL.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they are drawn to a container for mixing beverages with mixing means mounted upon the lid, which lid has a circumferential rim with specific engagement features, and a clamping support. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

20. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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21. Regarding claim 47, the word "means" is preceded by the word(s) "mesh" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 102

22. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

23. Claims 25, 27, 28, 31, 43, 44-46, 48, 49, 51, 52, 55-57, 59, 62-66, and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2002/0127307 A1 by McGILL.

24. With regard to independent claim 25, McGILL teaches a mixing apparatus comprising a container base 7, an open ended container suitable for blending beverages 3, and a container lid 2 having

a. mixing means mounted thereon and extending through the lid, shaft 8 and impeller 1, with means to connect to an external drive motor through aperture 4E on one end, and a mixing element at the other end (figure 1);

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- b. a rim with a circumferential slot for fitting of the lid 2 onto the open end of the container 3, into which the top end 3C of the container 3 is located when lid and container are assembled (figures 1-3);
 - c. where an outwardly convex portion 4 is formed on the lid within the rim portion (figures 1 and 2), which includes an access opening as described in (e) below and an opening through which the mixing means extends.
- 25. With regard to independent claim 49, McGILL teaches a container lid 2 for mounting on an open ended beverage container 3, having
 - a. mixing means mounted thereon and extending through the lid, shaft 8 and impeller 1, with means to connect to an external drive motor through aperture 4E on one end, and a mixing element at the other end (figure 1);
 - b. a rim for fitting of the lid 2 onto the open end of the container 3 (figures 1-3);
 - c. where an outwardly convex portion 4 is included on the lid within the rim portion (figures 1 and 2), which includes an access opening as described in (e) below and an opening through which the mixing means extends.
- 26. With regard to independent claim 59, McGILL teaches a container lid 2 for mounting on an open ended beverage container 3, having
 - a. mixing means mounted thereon and extending through the lid, shaft 8 and impeller 1, with means to connect to an external drive motor through aperture 4E on one end, and a mixing element at the other end (figure 1);

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b. a rim for fitting of the lid 2 onto the open end of the container 3 (figures 1-3);

c. where the lid defines an internal region (figure 3) having curved surfaces 14, in which the mixing means operates and is located centrally thereof (figure 1).

27. With regard to independent claim 64, McGILL teaches a container lid 2 for mounting on an open ended beverage container 3, having

a. mixing means mounted thereon and extending through the lid, shaft 8 and impeller 1, with means to connect to an external drive motor through aperture 4E on one end, and a mixing element at the other end (figure 1);

b. a rim for fitting of the lid 2 onto the open end of the container 3 (figures 1-3);

c. and having a product access opening with closure means through which the contents of the container may be accessed after mixing (straw 5 in figure 1 and P45; or alternatively, opening 12 and cover 16 in figure 3), radially disposed upon the lid from its center (figures 1 and 3).

28. With regard to claims 43 and 44, 56 and 57, 62 and 63, and 65, McGILL teaches a product access opening with closure means through which the contents of the container may be accessed after mixing (straw 5 in figure 1 and P45; or alternatively, opening 12 and cover 16 in figure 3), radially disposed upon the lid from its center (figures 1 and 3).

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29. With regard to claim 66, MCGILL teaches an outwardly convex portion 4 formed on the lid within the rim portion, including the access opening and mixing means (figures 1 and 2).

30. With regard to claim 68, MCGILL teaches that the lid defines an internal region where the mixing means operates (figure 1) which has curved surfaces 14 (figure 3).

31. With regard to claims 27 and 28, and 51 and 52, MCGILL teaches an outwardly convex portion projecting above the upper end of the container as defined by the plane of the container's rim; and parallel to the same plane defined by the container's upper end, and hence level with it.

32. With regard to claim 31, MCGILL teaches that his container lids assembled with their mixing means may be stackable or nestable with other lids (P64).

33. With regard to claims 45, 46, and 48, MCGILL teaches a container lid with a hole 12 and pocket 13 for holding product to be mixed with material in the container for mixing material to be mixed with the product in the main body of the container; in particular, the material may be gas for carbonation (P50, figure 3).

34. Claims 25, 26, 28, 30, 32-34, 43, 44, 49, 50, 52, 54-60, and 62-69 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,635,147 to LEE.

35. With regard to independent claim 25, LEE teaches a mixing apparatus capable of mixing liquids (1:29-40) with a container 20, a container base 10, and a container lid 30 (2:41); the latter having mixing means 6 comprising a shaft descending centrally from the lid and mixing elements 35 and 37 (figure 2); means 66, 67 for connecting to a drive motor (figure 3); comprising an outwardly convex portion 30 including the opening for

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the mixing means, and defining an internal region where the mixing means operates (figures 1, 2); and a rim with a circumferential slot into which the top end of the container is located when the container and lid are assembled. (figure 5).

36. With regard to independent claim 49, LEE teaches a container lid 30 for mounting on an open ended beverage container (2:41); having mixing means comprising mixing elements 35 and 37 (figure 2); means 66, 67 for connecting to a drive motor (figure 3); including an outwardly convex portion 30 including the opening for the mixing means; and a rim for fitting of the lid onto the open end of the container (figure 5).

37. With regard to independent claim 59, LEE teaches a container lid 30 for mounting on an open ended beverage container (2:41); having mixing means 6 comprising mixing elements 35 and 37 (figure 2); means 66, 67 for connecting to a drive motor (figure 3); defining an internal region having curved surfaces where the mixing means operates and is located centrally thereof (figures 1, 2); and a rim for fitting of the lid onto the open end of the container (figure 5).

38. With regard to independent claim 64, LEE teaches a container lid 30 for mounting on an open ended beverage container (2:41); having mixing means 6 comprising mixing elements 35 and 37 (figure 2); means 66, 67 for connecting to a drive motor (figure 3); comprising an outwardly convex portion 30 including the opening for the mixing means, and defining an internal region having curved surfaces where the mixing means operates and is located centrally thereof (figures 1, 2); having a product

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access opening, slideable lid 32 (3:59-63); and a rim for fitting of the lid onto the open end of the container (figure 5).

39. With regard to independent claim 69, LEE teaches a container lid 30 for mounting on an open ended beverage container (2:41); having mixing means 6 comprising a shaft descending centrally from the lid and mixing elements 35 and 37 (figure 2); means 66, 67 for connecting to a drive motor (figure 3); and a rim with a circumferential slot into which the top end of the container is located (figure 5), defined by oppositely-directed circumferential portions, the outer and inner portions of rim 68, where the first (outer) portion extends around the top edge of the container, contacts the inner side wall of the container 25a, and extends into the container; and has a curvilinear (being circumferential in extent) join at the midpoint of arced container rim 25a to the second (inner) portion which extends from its contact point with the inner wall of the container.

40. With regard to claims 26, 28, 30, 50, 52, 54, 55, 60, and 66-68, LEE teaches a transparent container lid 30 (2:41) of curvilinear dome shape and projecting above the upper end of the container (figure 2), comprising an outwardly convex portion 30 including the opening for the mixing means and an access opening, and defining an internal region having curved surfaces where the mixing means operates and is located centrally thereof (figures 1, 2).

41. With regard to claims 32-34, LEE teaches a rim with a circumferential slot into which the top end of the container is located (figure 5), defined by oppositely-directed circumferential portions, the outer and inner portions of rim 68, where the first (outer)

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portion extends around the top edge of the container, contacts the inner side wall of the container 25a, and extends into the container; and has a curvilinear (being circumferential in extent) join at the midpoint of arced container rim 25a to the second (inner) portion which extends from its contact point with the inner wall of the container, to in all about 2 times the distance the outer portion extends in all (figure 5).

42. With regard to claims 43, 44, 56, 57, 62, 63, and 65, LEE teaches a product access opening, slideable lid 32 (3:59-63) radially displaced from its center of the container lid (figure 1).

43. With regard to claim 58, the rim of LEE's lid has axial slits around its circumference, to engage its mixing means with gears 67 of the motor driveshaft 66 (figure 3).

Claim Rejections - 35 USC § 103

44. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

45. Claims 35, 36, 38-41, and 70 are rejected under 35 U.S.C. 103(a) as being obvious over US 2002/0127307 A1 by MCGILL.

46. With regard to claims 35, 36, and 70, MCGILL teaches a support 46 for an assembled container and lid (figures 11-14, P87ff) having a clamping member 50, moveable to engage the end of the container and locate the assembly during operation,

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with a clamping surface (the undersurface and unlabelled tip of 50) engageable with and extending beyond the side edges of the container (figure 14), reciprocally movable and capable of applying a predetermined force to a container by a piston and cylinder device (P95), and having switch means for detecting an obstruction to a clamping action (P96).

47. This support device is presented for in the context of an alternate embodiment of his invention where the mixing means are disposed in the base of the mixing container which has a separate lid. However, since it is clearly capable of performing the same functions with the upside-down containers of his first embodiment which have their mixing members in their lids as with the right-side-up containers of his second embodiment with separate lids and mixing elements, it would have been obvious to one of ordinary skill in the art to use the same support device with the mixing containers of the first type.

48. With regard to claims 38 and 40, MCGILL describes mixing means similar to those of his first embodiment (figures 1-4), comprised of a mixing element portion 35 which is arranged with the shaft portion 8, by inserting first one through the hole in the base and then locking the shaft into the mixing element (P100-P107).

a. The pieces are clearly capable of being joined in the opposite order, inserting first the shaft through the hole, then snapping the mixing element on to it (figures 15-18). The Courts have held that a statement of intended use in an apparatus claim fails to distinguish over a prior art apparatus. See *In re Sinex*, 309 F.2d 488, 492, 135 USPQ 302, 305 (CCPA 1962).

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b. Further, since the overall structure of the mixing element, the shaft onto which it fits, and the hole through which it protrudes are substantially the same and perform the same function as the mixing elements locatable in the lid in the first embodiment of MCGILL treated earlier, it would have been obvious to one of ordinary skill in the art to adopt the same details in manufacturing the mixing assemblies meant to penetrate the lid of the container rather than its base.

49. With regard to claims 39 and 41, the mixing element portion includes an opening 65 into which the shaft portion is locked and secured into place by shoulder means 62 (P106) and 66 (P103) (figures 16-18).

50. Claims 25, 26, 28, 32, 33, 43, 45-47, 50, 52, 53, 55-57, 59, 60-65, 68, and 69 are rejected under 35 U.S.C. 103(a) as being obvious over US 6,363,837 B1 to SHAM et al.

51. With regard to claims 25, 32, 33, 55-57, 59, 62-65, 68, and 69, SHAM et al teach a mixing apparatus with a base 108-110, a lid 4-12-52 defining an internal region having curved surfaces in which the mixing means operates, mixing means 94 comprised of a shaft 96 and a mixing element 98, a rim with a circumferential slot 56, and an outwardly convex portion 4 formed on the lid, and including the opening 75 through which the mixing means descends, and a radially displaced product access opening, spout 106 (figures 2-5). The circumferential slot at which the top end of the container 104 is located is defined by oppositely directed circumferential portions, the first portion, lower rim of part 52 (figure 4), closely adjacent to the inner side wall of container 104, and which in its curvilinear join with inner portion 56 extends into the container (figure 4).

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52. SHAM et al in the embodiments of figures 2-5 further teach connection means to drive motor 68, but rather than make it external to the container incorporate it into the lid itself (figure 5). However, in an alternate embodiment, SHAM et al incorporate the drive motor in a separate portion to which the container is attached, having means 75a to connect at the bottom end of the container the mixing element 98a locatable at the upper end of the container to the external drive motor 68a (figure 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the drive motor of SHAM et al's first embodiment in a detachable base part, as in his second embodiment: the motivation to do so would have been to make the juicer pitcher portion less top-heavy, and hence easier to pour. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

53. With regard to claims 26, 28, 50, 52, 53, 60, and 61, SHAM et al further provide an outwardly convex portion 4 that is a curvilinear since semi-spherical dome shape, with mixing means located centrally thereof (part 78 of the mixing means, figure 5), and projecting above the rim of the container (figure 3).

54. With regard to claims 45-47, SHAM et al further provide means 44 and 28 for holding product to be mixed with the material, sliced fruit to be juiced (figure 4), formed as a pocket under dome 4 which may be opened to place the fruit inside, and mesh means 29 for permitting communication from the material in the container 104 to encounter the fruit in the pocket when the pitcher is tipped (figure 4).

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55. Claims 42 and 71 are rejected under 35 U.S.C. 103(a) as being obvious over McGILL in view of SHAM et al. McGILL teaches lubrication means to lubricate the co-operating surfaces of the shaft portion and the opening of the lid (P107), but does not explicitly teach that they should be lubricated by the contents of the container, nor does he teach longitudinal slots in the side walls of that opening. However, SHAM et al provide vertical grooves on the surface of their mixing shaft 78 (figures 4 and 6), which would allow lubrication of the working elements by the juices dripping down from the juicing element above. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide such grooves, a common device for maintaining lubrication, at a rotary mixing interface; and to place the grooves on the inside of the opening rather than the outside of the shaft to provide the same function would also have been obvious to a person of ordinary skill in the art, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. See *In re Gazda*, 219 F.2d 449, 104 USPQ 400 (CCPA 1955).

56. Claim 37 is rejected under 35 U.S.C. 103(a) as being obvious over McGILL in view of US 4,108,054 to KLÖCKER et al.

a. McGILL teaches a clamping member, which in an alternate embodiment to the machine press type treated with regard to claims 35 and 36 operates by a clamping member 47, rotatorily connected to fixed support member 46 and moveable to engage the top end of the container and so clamp it in place, and which may have switch means for detecting an obstruction to a clamping action

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(P87-P91, P96). MCGILL does not appear to explicitly disclose that the mechanism for this safety switch might be springs.

b. However, KLÖCKER et al disclose a safety interlock device for a beverage blending machine, having a clamping member 36, rotatorily connected to fixed support member 1 and moveable to engage the top end of the container 8 and so clamp it in place, and which has safety switch means preventing movement upon an obstruction to clamping action (4:25-33). The pivots to this clamping apparatus and mechanical safety switch operate through springs (4:6-21, figures 1 and 2).

c. MCGILL and KLÖCKER et al are analogous art because they come from the same problem-solving area, that of providing safety switches for clamps supporting beverage blenders. At the time the invention was made, it would have been obvious to one of ordinary skill in the art to provide springs such as those of KLÖCKER et al for the mechanical safety switch mechanism of MCGILL. The motivation would have been to provide some small resistance to clamping, so that the arm could not clamp shut automatically without human intervention and a good connection. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Conclusion

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57. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: US 1,351,243 to CRAVES, US 2,042,176 to HAUSMAN, US 3,064,949 to DEWENTER, US 3,315,946 to NISSMAN, US 4,480,926 to LATTERY et al, US 4,487,509 to BOYCE, US 4,708,487 to MARSHALL, US 4,885,917 to SPECTOR, US 4,889,248 to BENNETT, US 5,816,136 to STALLINGS, and US 6,345,572 B1 to KAO.

58. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Janca whose telephone number is (571) 270-5550. The examiner can normally be reached on M-Th 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/DAVID L. SORKIN/
Primary Examiner, Art Unit 1797